

# **Voluntary Right to Buy – Midlands Pilot**

Guidance for housing associations

May 2018

## **Foreword**

Home ownership plays a vital role in social mobility, and this Government is committed to helping as many people as possible to realise their aspirations to own their own home. Social housing already helps many people to get on in life – by providing tenants with a safe, secure home as a foundation for work and education. But by giving tenants who aspire to own their own homes the opportunity to do so, we can provide them with greater financial security, and the support they need to build a long-term future for themselves and their families.

Over 2 million council tenants have been supported into home ownership through the Right to Buy, a scheme which has enjoyed unparalleled and enduring success since it was first launched in 1980. Yet most housing association tenants do not currently have access to the Right to Buy. That is why the Government, in partnership with the National Housing Federation, is committed to extending the opportunity to these tenants – through the Voluntary Right to Buy.

Since the signing of the historic voluntary agreement with housing associations, we have worked closely with the National Housing Federation and with housing associations to design the Voluntary Right to Buy. A small-scale initial pilot with five housing associations ran successfully in 2016-17. We have taken learning from that pilot to develop guidance on how the wider policy will operate, which we will be testing with a further, larger scale pilot scheme in the Midlands, with a view to wider roll-out across the country. Through this pilot we will give thousands more housing association tenants the opportunity to buy their homes at Right to Buy level discounts. This approach – working in partnership with the sector, and taking the time that's needed to design a policy that really delivers for everyone – will provide a blueprint for Government best practice.

We have developed a policy that not only fits the needs of tenants who aspire to own their own homes, but which will also significantly boost the supply of new affordable housing. Under the voluntary agreement, housing associations have committed to ensuring that every home sold is replaced on a one for one basis nationally, and they have a proven track record in delivering new affordable housing.

I am grateful to the National Housing Federation, and the housing association sector, for working in partnership with us, and I look forward to working with housing associations in the Midlands as we embark on this exciting new phase of the Right to Buy.

**Dominic Raab, Minister of State for Housing**

## **Foreword**

I'm pleased to introduce the Voluntary Right to Buy guidance for housing associations participating in the Midlands regional pilot. The progress made on the Voluntary Right to Buy scheme and the production of this guidance document are the result of a huge amount of work among housing sector colleagues, civil servants and Federation staff, whom I'd like to thank for their ongoing efforts.

When we worked with the Government in 2015 on its proposal to extend the Right to Buy scheme to housing association tenants, the Federation wanted to showcase housing associations for the collaborative, innovative and open-minded organisations that they are. The Voluntary Right to Buy agreement is just one of many ways that the sector has shown these qualities in that time and this is something we can be proud of. This pilot proves that when we pull together, we can do things differently, in a way that works for tenants seeking to realise their home ownership ambitions, and for our own plans to build more affordable homes. I know this will come through further as the pilot progresses.

Naturally, we need to take the time to ensure that our plans for the Voluntary Right to Buy scheme work as we all intend. For all parties, a successful Voluntary Right to Buy will be defined not only by a smooth process for the tenant purchasing a home, including the availability of a portable discount, but by each home sold being replaced on a one for one basis. Housing associations participating in this pilot will support tenants who want to buy their homes, but also ensure that they have a strong offer for those who'll be occasionally asked to consider alternate properties. I hope all the housing associations involved in the Midlands pilot are as confident as I am that they'll do a fantastic job of testing these important aspects of the Voluntary Right to Buy, with support from the Federation.

I want to again thank everyone involved in working with us and the Government to get the Voluntary Right to Buy to this important testing stage.

**David Orr, Chief Executive, National Housing Federation**

## Table of contents

	Page
<b><u>Introduction</u></b>	6
<u>Key principles</u>	6
<u>Purpose of this guidance</u>	7
<u>Who this guidance is for</u>	7
<u>Tenant eligibility</u>	8
<u>Roles and responsibilities</u>	8
<u>Capital Funding Guide</u>	9
<u>Further information</u>	9
<u>Terms and conditions for the operation of the pilot</u>	10
<u>Introduction</u>	10
<u>Mandatory terms</u>	10
<u>Reimbursement of discount</u>	11
<u>Reporting and data sharing agreement</u>	11
<b><u>Section 1: Preparing for the launch of the scheme</u></b>	15
<u>Establishing your property exemptions and portability policies</u>	15
<u>Developing a local sales policy</u>	15
<u>Developing a local portable discount policy</u>	17
<u>Responding effectively to tenant complaints</u>	17
<u>The role of the Board</u>	18
<u>Setting up the application form and process</u>	19
<u>Application process – timings</u>	19
<u>Replacing homes sold</u>	20
<u>Establishing partnerships</u>	21
<b><u>Section 2: Before an application is submitted</u></b>	22
<u>Informing tenants of the opportunity to purchase a home using right to buy level discounts</u>	22

<a href="#"><u>Signposting tenant advice</u></a>	22
<b><a href="#"><u>Section 3: The application process</u></a></b>	24
<a href="#"><u>Summary of the application process</u></a>	24
Step 1: Discount availability check	
Step 2: Tenant eligibility check	
Step 3: Checking property restrictions on sales	
Step 4: Charging a fee	
Step 5: Valuing the property	
Step 6: Calculating the discount	
Step 7: Making the formal offer to sell	
Step 8: The sales process	
Step 9: Post sale rights and responsibilities	
Step 10: Right of first refusal	
Step 11: Legal charge	
Step 12: Tenant repayment of discount for onward sale	
Step 13: Tenant repayment of discount for subletting	
Step 14: Repayments process	
<a href="#"><u>Fraud and exploitation</u></a>	33
<b><a href="#"><u>Section 4: Operating a portable discount</u></a></b>	35
<a href="#"><u>Setting a local portability policy</u></a>	35
<a href="#"><u>Establishing the discount</u></a>	38
<a href="#"><u>Identifying alternative properties</u></a>	38
<a href="#"><u>The process to port</u></a>	39
<b><a href="#"><u>Section 5: Replacing homes sold</u></a></b>	40
<a href="#"><u>Setting a local replacement policy</u></a>	41
<a href="#"><u>Receipts from the sale of homes under the Voluntary Right to Buy</u></a>	41
<a href="#"><u>Payment of the discount to housing associations</u></a>	42
<a href="#"><u>Replacing homes sold</u></a>	42
<a href="#"><u>Counting replacement homes against the national one for one commitment</u></a>	43
<a href="#"><u>Recording sales and replacements</u></a>	43
<b><a href="#"><u>Section 6: Audit assurance</u></a></b>	44

## Introduction

In its manifesto, the Government made a commitment to extend the Right to Buy to housing association tenants.

In September 2015, the National Housing Federation (NHF), on behalf of the housing association sector, made an offer to Government to extend Right to Buy level discounts to eligible tenants through a voluntary rather than statutory approach - the "Voluntary Right to Buy" (VRtB).

The offer was accepted by the Government in October 2015. As a result of the agreement, the Housing and Planning Act 2016 was drafted to enact only what was necessary to enable the Secretary of State to underpin the agreement. This includes:

- i) powers to compensate private registered providers for the cost of a discount; and
- ii) setting home ownership criteria, creating an expectation that all housing associations will provide a home ownership offer to their tenants that will be monitored by the Regulator.

An initial pilot ran during 2016-17 with five housing associations across England. A larger regional pilot was confirmed in the Government's 2017 Autumn Budget – this guidance covers this regional pilot. The pilot is open to participating housing association tenants in the East and West Midlands.

The regional pilot aims to test specific aspects of the policy not tested in the initial pilot: namely one for one replacement of housing sold, and portability of discounts for tenants who are unable to buy the property they currently live in.

## Key principles

The agreement between the Government and the housing association sector was based on four key principles:

- **Right to Buy level discounts for eligible housing association tenants:** eligible housing association tenants would have the right to the same level of discounts, funded by the Government, as local authority tenants have under the statutory Right to Buy scheme. Eligibility for the scheme is determined by the Government.
- **Board control over which homes to sell:** housing associations will have the final decision about whether to sell an individual property, with the presumption that they will sell a tenant their current home where they can. Where they decide not to sell the tenant their existing home, the Government agrees to compensate housing associations if the discount is applied to an alternative housing association property purchased by the tenant (subject to certain conditions – see Section 4).
- **Full compensation:** housing associations will receive the full market value of the properties sold, with the value of the discount funded by the Government, subject to housing associations complying with the eligibility criteria, the

elements of this guide highlighted in bold, and the Capital Funding Guide (issued by Homes England) as it relates to the Voluntary Right to Buy.

- **Flexible one for one replacement through new supply nationally:** for every home sold under the agreement in England a new affordable property will be built thereby increasing overall supply. Individually, housing associations do not have to replace on a one for one basis. Some housing associations may not be able to build at a ratio of one for one, but it is expected that this will be balanced by others delivering to a higher ratio to ensure the sector meets its commitment under the terms of the agreement.

The type, tenure and location of replacements are a matter for the housing association as long as the property can be deemed to be affordable.

In some limited circumstances it may not be possible, appropriate or desirable for housing associations to build a new home to replace the one sold. In these circumstances housing associations would have the flexibility to buy another property or bring an empty property back into use which will count as a replacement property.

## **Purpose of this guidance**

Housing associations and the National Housing Federation have worked with Government and its agencies to put the key principles within the agreement into practice. This joint guidance for landlords outlines further detail on the operation of the scheme to support housing associations to prepare for the roll out of the scheme and develop their local policies.

The guide is intended to provide landlords responsible for processing tenants' Voluntary Right to Buy applications with information and best practice advice to help them process the applications in an efficient and effective way. It will also help landlords consider how to determine their local policies.

The guide is divided into sections, each covering a series of steps within each stage of the Voluntary Right to Buy process:

- SECTION ONE: Preparing for the launch of the scheme
- SECTION TWO: Before an application is submitted
- SECTION THREE: The application process
- SECTION FOUR: Operating a portable discount
- SECTION FIVE: Replacing homes sold
- SECTION SIX: Audit assurance

## **Who this guidance is for**

This guidance is not intended for tenants interested in buying a home. When the scheme is launched tenants can be signposted to the Government's Voluntary Right to Buy website: [www.righttobuy.gov.uk](http://www.righttobuy.gov.uk), or to the Right to Buy agents: [www.righttobuy.gov.uk/agent-service](http://www.righttobuy.gov.uk/agent-service). These sources provide more information about the process and support tenants to assess whether they are eligible and

decide if buying a home is the right choice for them. Together with the important work landlords do communicating the scheme to tenants, this helps to ensure that only those who are eligible apply. Government advice will make clear to tenants that they should seek independent legal advice.

Some of the terms of the regional pilot may differ in the main Voluntary Right to Buy scheme. For example, the discount compensation will be paid at the point of sale in the regional pilot, but will be split in the main scheme, with part of the compensation linked to and paid on evidence of the replacement home. The home ownership criteria will not be published or monitored for the regional pilot. Participating housing associations will just pilot the Voluntary Right to Buy scheme as laid out in this guidance.

### **Tenant eligibility**

There are tenants within certain groups of housing providers whose tenancy types are not eligible for the scheme and for whom the opportunity to access Right to Buy level discounts or access a portable discount does not apply. They are:

- residents of co-operative housing associations
- residents of alms-houses.

Tenants with the Preserved Right to Buy and Statutory Right to Buy are ineligible for the voluntary scheme; they already benefit from the Right to Buy discounts available for local authority tenants. Tenants who currently have the Right to Acquire will retain this right but they will also have access to the Voluntary Right to Buy, assuming they meet the eligibility criteria for the scheme.

The eligibility requirements for tenants are outlined in full in section three of this document.

### **Roles and responsibilities**

The development of the Voluntary Right to Buy scheme has been a joint endeavour by the Government and the housing association sector. Each key player has a crucial role to ensure the successful implementation of the scheme. These roles and responsibilities are set out below.

**Housing associations** will operate the scheme and work with eligible tenants who want to purchase their home. In circumstances where housing associations exercise discretion not to sell the tenant their existing home, they will work with them to port their discount to an alternative property within the housing association sector. Housing associations will use the receipts from the sale of the home to invest in affordable housing supply and collectively deliver the commitment of replacing every home sold through new supply nationally.

**The Ministry of Housing, Communities and Local Government (MHCLG)** will set the terms on which it will pay compensation to housing associations for the value of the discount, and will manage the available budget, including halting transactions for a period, if necessary.

**Homes England** will operate the data systems and administer payments to housing associations to cover the cost of the discount (including the calculation of the discount), and will be responsible for compliance audit.

**The National Housing Federation** will work with its members to support housing associations to implement the Voluntary Right to Buy and work with the Government to ensure that the system remains fit for purpose.

**The Housing Ombudsman** will deal with complaints in accordance with the Housing Ombudsman Scheme.

## Capital Funding Guide

This document should be read in conjunction with the relevant chapter of the Capital Funding Guide, to be published by Homes England, which will set out the requirements for claiming compensation payments for the discount and reporting requirements. These requirements apply from the point of receiving an application.

[www.gov.uk/guidance/capital-funding-guide](http://www.gov.uk/guidance/capital-funding-guide)

## Further information

In addition to this guidance, housing associations can get more information from:

The National Housing Federation: [www.housing.org.uk](http://www.housing.org.uk)

Homes England: [www.gov.uk/government/organisations/homes-england](http://www.gov.uk/government/organisations/homes-england)

MHCLG Right to Buy team: [RTB@communities.gsi.gov.uk](mailto:RTB@communities.gsi.gov.uk)

## Terms and conditions for the operation of the pilot

### Introduction

The regional pilot will test key features of the policy including portability and one for one replacement. The regional pilot will provide important evidence to inform the design of the main scheme. A full list of housing associations who have agreed to participate in the pilot will be published in due course on the NHF/MHCLG website.

### Mandatory terms

Some of the criteria set out in this guidance are mandatory under the terms by which the Government has agreed to pay compensation for the discount. These requirements are highlighted using the word 'must' in bold throughout the document for ease of reference. Other elements of this guidance are a matter for your discretion. Best practice and case studies are included to help. **A summary of the mandatory terms is set out below:**

#### You must...

- You **must** publish your local policy setting out the circumstances under which you intend to operate your discretion not to sell.
- You **must** publish your local policy for porting the discount.
- You **must** ensure that the terms of local policies on discretion and portability are clear and transparent to tenants.
- You **must offer** the tenant the opportunity to use their discount to purchase an alternative property from either your own or another association's stock if the tenant is unable to buy their current home.
- You **must** record in real time any applications that do not proceed.
- You (or an agent acting on your behalf) **must** carry out a document check - at application stage – with all applicants, to ensure that all those purchasing have the necessary immigration status to be eligible to buy the property.

If the tenant ports their discount to a property owned by another landlord, that landlord **must** satisfy themselves that the immigration checks have been carried out before completing the sale.

- Where a tenant is purchasing via portability, you **must** amend the address on the Homes England IMS.
- You **must** confirm the completion of the sale on IMS.

#### You must not...

- You **must not** accept any applications that do not have a unique reference number (URN).
- You **must not** offer a portable discount on a property on the open market.
- You **must not** allow ineligible tenants to proceed with a purchase.

## **Reimbursement of discount**

The Ministry of Housing, Communities and Local Government will reimburse the participating housing associations in full for the given discount on the completion of each sale under the regional pilot. The discount will match that available under the statutory Right to Buy under the Housing Act 1985.

Once the sale of a property is completed, the housing association will notify the Department or such organisation as the Department nominates. For the regional pilot, sales should be recorded on Homes England's Investment Management System ('IMS').

When making a claim for payment, the participating housing association will need to confirm that:

- The contents of the application are correct;
- The property is subject to the Voluntary Right to Buy under Sections 64–65 and 67–68 of the Housing and Planning Act 2016 and in accordance with the requirements of the Voluntary Right to Buy scheme; and
- The sale of the property has been completed.

For the regional pilot, the housing association will receive a grant equal to the full value of the discount from the Government within 10 working days of the date that the association notifies Homes England of the completion of a sale.

The participating housing associations shall use all amounts received from the Department within 10 years of the date of receipt by the association of those amounts.

## **Reporting and data sharing agreement**

Government is testing a range of aspects of the policy through the regional pilot including demand, one for one replacement, portability and fraud prevention. Learning from the regional pilot will be used to inform how the main scheme will operate. To support this, it's therefore vital that housing associations provide data – both to Homes England's IMS, and directly to MHCLG.

### *1. Application details*

A standard application form template will be provided, outlining the data that should be collected from applicants at application stage, and the data needed on the intended property. You may ask for additional information as required by your organisation, and it is up to you how you collect the data.

### *2. Investment Management System*

Not all the information you collect needs to be submitted to the IMS – MHCLG and Homes England will flag separately what data should be submitted in Homes England's IMS Guide. This will cover data about the property and sale to enable the discount to be calculated and claimed, data about the applicants and the reason for an application being terminated.

### 3. *Replacement reporting*

During the regional pilot, the IMS will not be set up to capture the replacement properties added nor link them to the properties sold; this will be put in place for the main scheme. We will be asking you to report on a quarterly basis (through the pilot up to the quarter after the last sale) to summarise key aspects of replacement. This will include the source of the replacement (e.g. new build, purchased off-plan, purchase on the open market, empty property back into use), the location of the replacement property, whether it is general needs or supported housing, and number of bedrooms.

### 4. *Pilot research*

Some research will be commissioned during the pilot to establish more about take-up, operational issues including fraud, and how the key elements such as portability are working. This is important to inform the main scheme and ensure its success. We may ask you to participate in this research, which will involve extracting information from your own databases and other records.

## **Voluntary Right to Buy: Checklist**

### **Preparing for the launch of the scheme**

- ✓ Understand in advance the contractual limitations on any sales which may be caused as a result of section 106 agreements, nominations agreements or restrictive covenants.
- ✓ Discuss with your board how you intend to exercise your discretion and the key principles by which you will operate the Voluntary Right to Buy in your local area.
- ✓ Publish your local policy on how you intend to use your discretion so that it is clearly available to tenants when they apply.
- ✓ Consider what your local approach to operating a portable discount will look like and what properties you will be able to offer tenants to port to.
- ✓ Consider working with other landlords to create partnership(s) to extend porting opportunities by agreement.
- ✓ Consider developing an information pack for tenants. An example of a tenant information pack used in the initial pilot can be made available on request.
- ✓ Consider how you will approach and manage the processing of applications.
- ✓ Consider how your processes will support fraud prevention.
- ✓ Consider how you will replace the homes sold.
- ✓ Ensure you understand and comply with the requirements of the Capital Funding Guide.
- ✓ LSVTs should review their stock transfer agreements for restrictions and clawback/receipt sharing provisions.
- ✓ Consider the resourcing, staffing, and training implications of Voluntary Right to Buy for your organisation.

### **Before an application is submitted**

- ✓ Consider how you will highlight key sources of information and advice to your tenants. This will assist them to consider whether they are eligible for, can afford to, and wish to take up the opportunity to purchase a home using Right to Buy level discounts.
- ✓ Consider how your approach to the Voluntary Right to Buy can be integrated with your wider approach to home ownership.

### **The application process**

- ✓ If you don't already have one, start developing your local RICS accredited list and consider whether you wish to do this independently or in partnership with other associations.
- ✓ Check to see whether your red line boundary maps are up to date.
- ✓ Consider your process for checking the immigration status of applicants, including the type of documents you may already hold on file to evidence their eligibility.
- ✓ Consider keeping a log of those applications which have been declined and the reason why they were declined. This will ensure that you can pick up any themes or patterns and may help you think about how you operate your discretion not to sell.
- ✓ Provide the information required from you by Homes England, as described in the Capital Funding Guide.

### **Operating a portable discount**

- ✓ Review and map which properties you are planning to exercise discretion not to sell.
- ✓ Review likely volume of available porting properties against volume of stock on which discretion not to sell will be exercised.
- ✓ Use this information to refine and develop a portability policy so that it reflects the available properties you may be able to offer over a given time period.
- ✓ If desired, approach potential housing association partners to establish cross organisational porting agreements.
- ✓ Review portability policy after 12 months.
- ✓ Consider how you will work to highlight other home ownership options to the tenant. This might include signposting to shared ownership opportunities, Help to Buy and other schemes.

### **Replacing homes sold: checklist**

- ✓ Consider how you will replace the homes sold and how this can fit with and support your broader development programme.
- ✓ Include assumptions about sales and replacements in your stress testing projections.
- ✓ Consider whether you wish to work with other associations via a development consortium to build new homes.

## SECTION 1: Preparing for the launch of the scheme

### Establishing your property exemptions and portability policies

A central principle within the agreement to extend Right to Buy level discounts to eligible housing association tenants is a presumption that you will sell an eligible tenant the property in which they live.

You have discretion not to sell that property but you **must** publish your local policy setting out the circumstances under which you intend to operate your discretion. There may also be circumstances where you are unable to sell a particular property, for example where there is a restrictive covenant or an affordable housing section 106 agreement.

In circumstances where you are unable or choose not to sell the eligible tenant their existing home you **must** offer your tenant the opportunity to use their discount to purchase an alternative property from either your own stock, or by agreement, another association's stock. This can include properties that you have developed for open market sale. It is up to you to determine the extent of that offer, depending on what is reasonable for the circumstances locally. You **must** publish your local policy for porting the discount.

You **must** publish both your local policies on discretion and portability and ensure that the terms are clear and transparent to tenants when the scheme is launched. More information on how to work with eligible tenants to port their discount is provided in Section 4. Housing associations should use their local policies to ensure that eligible tenants are clear about the opportunities available to them through the scheme.

### Developing a local sales policy

It is up to you to decide on which properties you wish to exercise your discretion not to sell under this scheme.

There are likely to be a number of reasons why you might choose to operate your discretion. It is for you to decide how to operate your discretion locally.

You may wish to identify those properties where there are currently formal restrictions on sales. This may include those properties that are subject to sales limitations as part of their Section 106 agreements or restrictive covenants or those subject to stock transfer or nomination agreements. If so, you may want to map them out in advance of the launch of the scheme – although there is no requirement to identify individual properties in your local policy. Assets and liability registers may already contain some of this information. The NHF has published a [guide](#) on asset and liability registers which may prove helpful.

There may be opportunities to renegotiate Section 106 agreements and nomination agreements through strategic discussions with local authorities, focusing on schemes rather than individual properties. It is up to you to decide whether you wish

to initiate a discussion about this, and to decide on the approach that works best in your local area.

If you are selling a property that you have used as loan security there will be additional factors to consider both before and after the sale, and you may wish to think about how you will approach this. When a property used as loan security becomes subject to a Voluntary Right to Buy sale, you should check loan agreements for any specific criteria attached to property to be pledged as substitute loan collateral.

You may also wish to operate discretion on certain categories of housing, such as legacy or rural properties. It is up to you whether you do this and whether you exclude certain categories of properties across your stock or just in certain locations. There will not be a fixed definition of what constitutes a rural property for the purposes of Voluntary Right to Buy. Associations will be able to define what rural means in the context of their local area.

Some other illustrative examples of potential exclusions are provided below. Housing associations may choose to exercise their discretion in a different way as they see fit.

- In rural areas, where replacement may be difficult or costly.
- For supported housing, where ongoing management or replacement may be difficult or costly.
- Properties provided through charitable or public benefit resource or bequeathed.
- Specialist properties of historical interest.
- Properties where the landlord does not have sufficient legal interest to be able to grant a lease exceeding 21 years for a house or not less than 50 years for a flat.
- Tied accommodation occupied because the tenant is employed by a social landlord.
- Where there are clear restrictive covenants around the protection of rural homes.
- Properties held in a Community Land Trust where the association does not own the title to the land.
- Where clawback arrangements in transfer agreements mean that you would not receive 100% compensation for the sale.
- In circumstances where the sale would breach the cost floor (see Section 3, step 3).

Whatever approach you choose, you **must** make your policy available when the scheme is launched, being clear about your rationale for operating discretion. This will be important in managing tenant expectations and dealing with any complaints.

### **Thames Valley Housing Association: Mapping restrictions on sales**

Thames Valley Housing Association (TVHA) participated in the initial Voluntary Right to Buy pilot. To prepare for the pilot we mapped the restrictions on all of the properties within the scope of the pilot to ensure we knew which properties could be sold. This involved checking the detail of Section 106 agreements and nominations agreements. Having good quality data about your housing stock is essential for this process. Although TVHA's data was very good to start with we still had to improve our data during this process, especially around Section 106 agreements.

As part of the pilot we developed a clear policy that outlined our criteria for excluding homes from sale. We published policy guidelines to ensure that tenants could see the clear and equitable framework that decisions about exclusions were based on.

We used the data we had gathered through mapping restrictions on sales to produce a list of excluded homes so we could respond quickly to each application. For homes that were not excluded under the main criteria we conducted a more detailed investigation to check if the property could be sold. This is necessary as some restrictions are difficult to spot and may only become clear after a more detailed search on the title.

### **Developing a local portable discount policy**

Where you operate your discretion not to sell the property in which the eligible tenant lives (this includes circumstances in which you are prevented from selling the property – for example via planning restrictions) in line with your local policy you **must** offer the tenant the opportunity to use their discount to purchase an alternative property from either your own or another association's stock. However, it is up to you to determine the extent of that offer, depending on what is reasonable for the circumstances locally. You **must not** offer a portable discount on a property on the open market.

Full details on operating the portable discount are set out in Section 4 of this guidance.

### **Responding effectively to tenant complaints**

You may also wish to consider how you will handle and respond effectively to tenant complaints. Your complaints handling procedure will be the first port of call for resolving a tenant's complaints. If you are unable to resolve the complaint through the local complaints procedure then the tenant may wish to seek support from a designated person (an MP, a local councillor or a Tenant Panel) or, following a referral from a designated person or once 8 weeks has elapsed since the complaints process has concluded, make a complaint to the Housing Ombudsman.

It should be clear to tenants participating in this process how they should raise a complaint and what they can expect from their landlord to resolve that complaint.

You should also ensure that tenants know how to contact designated persons and the Housing Ombudsman. The Ombudsman will consider and determine complaints under the same process as they consider all other complaints.

### **Case study**

#### **Riverside: Managing expectations and preparing to deal with complaints**

At Riverside, we understand that for the majority of tenants applying for the Voluntary Right to Buy it will be the first time they have bought a house, so they are likely to have a range of questions about the details of the application process itself and the additional responsibilities of being a home owner.

We provide a clear and realistic timeline for the application process to tenants from the outset so they know when and how often they should expect to hear from us and how long they should expect to wait for their valuation, formal offer notice and conveyancing. We are transparent in explaining any issues or delays, for example, legal complications which may arise, and give a timeframe for when they are likely to be resolved.

We have a dedicated Voluntary Right to Buy team that can provide detailed answers to the majority of tenants' queries. When a tenant phones the customer service centre they are put directly through to the specialist team so they receive an immediate response wherever possible.

Providing clear and precise communication upfront and having an informed, dedicated team available to answer any further questions has been key to ensuring tenants have a good customer service experience and to minimising complaints. We have received positive feedback from applicants about the information and support provided throughout the process and none of the hundreds of tenants we have dealt with so far have felt the need to resort to our formal complaints procedure.

### **The role of the Board**

It is important to agree clearly with your board the circumstances under which you will sell properties to eligible tenants and make those decisions clearly available to tenants by way of a local policy. When discussing this issue with your board, you may wish to consider the following:

- The different housing markets in which you operate
- The different types of homes you provide to tenants and the demand for those homes
- Formal restrictions on sales
- Asset cover and properties in charge
- How you will define what rural means in the context of your local area
- Working with local authorities to meet local housing need

- How sales and replacements under the Voluntary Right to Buy could support or undermine the organisation's asset management and development strategy
- How to communicate your policy to tenants and handle complaints.

### **Setting up the application form and process**

A standard application form will be made available for use by housing associations. You **must** include all of the questions in this form as these will provide the data about the scheme required by the Government.

You will need to consider whether you wish to operate an online or paper based application process and your approach to processing applications. More information is available in Section 3 of this document.

Regardless of whether you offer a paper based or web based application process you may wish to consider the accessibility of your communications to your tenants. This may include updating your web presence in readiness for the launch of the scheme.

You will also want to consider how your processes will support fraud prevention. More information is available in Section 3 of this document.

### **Application process – timings**

Section 3 sets out each of the steps in the application and sales process. In each of the steps a recommendation is given on the likely timescales.

Government funding for the discount will be managed in year. As such, accurate forecasting of purchase completions will be important to the process. You may wish to consider creating a local approach to handling delays. This might include details of how you will inform the tenant that they have exceeded the recommended timing, and how many times you will contact them, before cancelling the application.

## **Case study**

### **Sovereign Housing Association: Online application process**

At Sovereign our pilot has an online-only application process and our web form includes a postcode checker, linked to a list of included and excluded properties. Applicants can also upload supporting documents and pay the administration fee online. All this data gets transferred overnight into our CRM system and applications are managed within that throughout the process. While most aspects are carried out digitally, the home visit stage is still important to check the property and any other documents, such as proof of identity.

Handling online applications requires fewer resources than a paper-based process in the initial stages. Having exemptions built in to an early section of the form also enables applicants to get a quick answer on whether their home is included or excluded from the pilot – they don't need to fill in the rest of the form if it isn't. Being online meant we were agile in our implementation process, and we were able to add to and develop the application form as we went along. We could easily add to our FAQs and supporting information too, learning from what else residents wanted to know. While the majority of our applicants have been happy to apply online, a small number needed a paper-based solution, which we were able to provide.

## **Replacing homes sold**

The agreement entered into between the housing association sector and the Government is that homes sold will be replaced on a one for one basis at a national level through new supply. Individual housing associations will not be required to demonstrate a replacement for every property sold but collectively the sector will need to demonstrate that they have met the national commitment within the Voluntary Right to Buy agreement.

A data sharing agreement will be put in place to ensure that information on replacement homes and progress against the national one for one replacement commitment is transparent.

You will receive 100% of the receipts from the sale of the property based on the open market value for the property being sold. The Government will recompense housing associations in full for the discount offered to tenants subject to meeting the terms of this guidance and the requirements of the Capital Funding Guide so that associations receive full market value. For the duration of the regional pilot, 100% of the payment from Government to cover the discount will be paid by Homes England on completion of the sale.

Full details on the requirements for replacement units, logging and monitoring replacements and receiving the receipts from the sale of the property are available in Section 5 of this document.

Housing associations will wish to consider as part of their preparation for the scheme how they will replace homes sold. More detail on the type and nature of eligible replacements can be found in Section 5.

## **Establishing partnerships**

You will need to consider how best to operate the scheme locally including how the scheme is resourced and delivered. This should include considering how you can most effectively contribute to the shared commitment to replace homes sold under the Voluntary Right to Buy on a one for one basis nationally through new supply. Working in partnership with other housing associations locally or with the local authority may be an option for some associations. Non-developing associations will need to give early thought to how they will partner with developing associations to replace homes sold.

### **Case study**

#### **Connexus: The cascade approach to rural replacement**

In conjunction with our local authorities, Connexus has drafted a headline policy statement and shared this with other registered providers at a meeting of Shropshire's Social Housing Forum.

Beyond the Midlands pilot, the presumption will be to sell qualifying tenants the property in which they live, whilst exercising discretion not to sell in a limited number of prescribed circumstances. The policy under discussion states that Connexus will not sell properties built on rural exception sites or in small villages not currently recognised by the Council as being suitable for new development/replacement homes. These properties are covered by section 106 agreements, which we would wish to honour, and there is an expectation locally that they will remain affordable in perpetuity. Where the development plan permits new housing growth, for instance in larger villages and rural growth centres, we would normally support a sale and commit to a rural cascade to replace the property in that community, and only where this is not possible, elsewhere in Shropshire/Herefordshire, but not beyond either County.

In terms of the Midlands pilot where sales will be limited, Connexus commits to replace homes sold in a cascade as follows: where the development plan permits new housing growth, for instance in larger villages and rural growth centres, we would seek to replace the property in that community, and only where this is not possible, elsewhere in Shropshire/Herefordshire, but not beyond either County.

### **Preparing for the launch of the scheme: checklist**

- ✓ Understand the contractual limitations on any sales which may be in place as a result of section 106 agreements, nominations agreements or restrictive covenants in advance.
- ✓ Discuss with your board how you intend to exercise your discretion and the key principles by which you will operate the voluntary right to buy in your local area.
- ✓ Publish your local policy on how you intend to use your discretion so that it is clearly available to tenants when they apply.
- ✓ Consider what your local approach to operating a portable discount will look like and what properties you will be able to offer tenants to port to.
- ✓ Consider developing an information pack for tenants. An example of a tenant information pack used in the initial pilot can be made available on request.
- ✓ Consider how you will approach and manage the processing of applications.
- ✓ Consider how your processes will support fraud prevention.
- ✓ Consider how you will replace the homes sold.

## **SECTION 2: Before an application is submitted**

### **Informing tenants of the opportunity to purchase a home using Right to Buy level discounts**

Landlords participating in the Voluntary Right to Buy regional pilot are expected to publish and publicise the details of the scheme to ensure that all their tenants are aware of the scheme and their sales and portability policies

### **Signposting tenant advice**

The first step for tenants will be to inform themselves about the scheme and assess if they are eligible for a Right to Buy level discount under the voluntary scheme. Tenants will be able to access information about the scheme on the Government's Right to Buy website. The role of the Government-funded Right to Buy Agents will be expanded to provide free and impartial advice to housing association tenants on the rules and requirements of the scheme. The Right to Buy Agents can also help tenants as they go through the purchase process and advise them on issues such as affordability, costs of home ownership and fraud. If you are contacted by a tenant for information, you may want to recommend that they speak to the Right to Buy Agents before they embark on the process.

*Right to Buy Agents:*

Website: [www.righttobuy.gov.uk/agent-service](http://www.righttobuy.gov.uk/agent-service)  
Email address: [enquiry@righttobuyagent.org.uk](mailto:enquiry@righttobuyagent.org.uk)  
Telephone number: [0300 123 0913](tel:03001230913)

## **Case Study**

### **Sovereign Housing Association: Signposting information for tenants**

Sovereign Housing Association, one of the housing associations in the initial Voluntary Right to Buy pilot, explained the Voluntary Right to Buy programme to their tenants in a range of ways. This included an online video setting out the process and things to consider before applying. The video can be accessed [here](#).

In addition to the Right to Buy Agents you might also consider signposting tenants to the following resources:

MHCLG Right to Buy website - [www.righttobuy.gov.uk](http://www.righttobuy.gov.uk)

Right to Buy Facebook page - [www.facebook.com/righttobuy](http://www.facebook.com/righttobuy)

Money Advice Service - [www.moneyadviceservice.org.uk](http://www.moneyadviceservice.org.uk)

Mortgage Advice Bureau - [www.mortgageadvicebureau.com](http://www.mortgageadvicebureau.com)

### **Before an application is submitted – checklist**

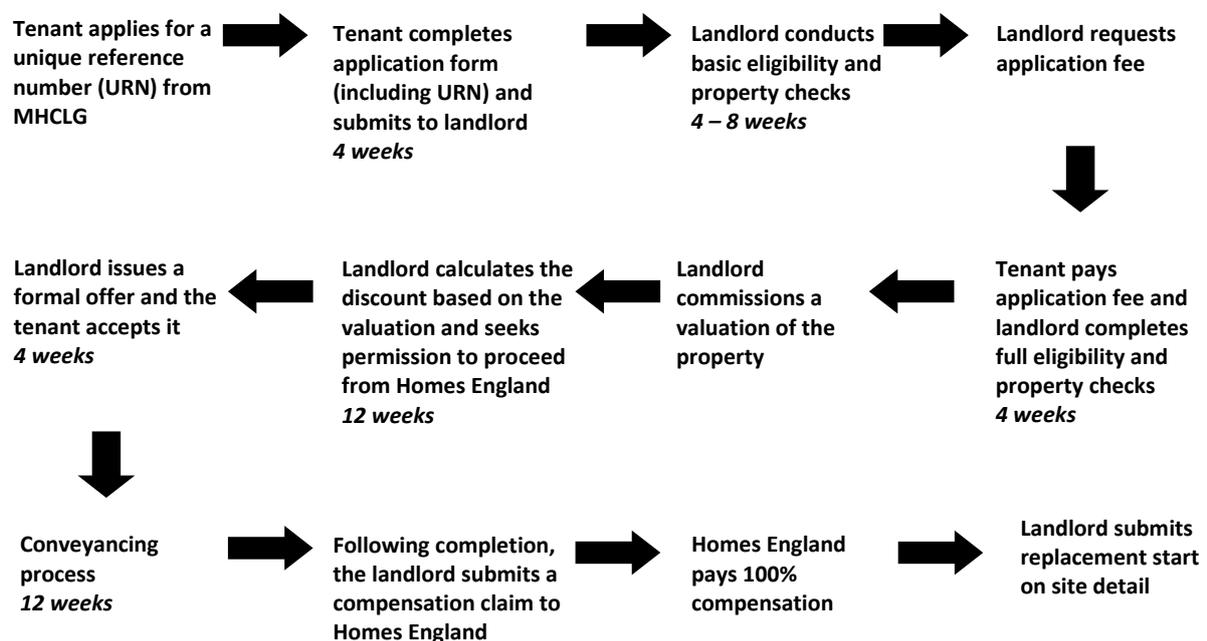
- ✓ Consider how you will highlight key sources of information and advice to your tenants. This will assist them to consider whether they are eligible for, can afford to, and wish to take up the opportunity to purchase a home using Right to Buy level discounts.
- ✓ Consider how your approach to the Voluntary Right to Buy can be integrated with your wider approach to home ownership.

## SECTION 3: The application process

This guidance sets out how the application process will work, where associations will need to develop individual processes. Prior to the launch, key standard documents will be provided, which you may find useful. Some elements of the process are required by Government to provide the necessary assurance for paying the discount compensation under the terms of the agreement. These are highlighted in bold.

### Summary of the application process

Below is a flow diagram showing the application process for eligible tenants, with indicative timescales. This assumes that the tenant is eligible and buys the home in which they currently live.



### Step one: Discount availability check

The scheme is demand led but the Government will have a finite amount of funding available to compensate housing associations for the cost of discounts in a given year. The scheme therefore contains safeguards to ensure the Government operates within its funding envelope.

The first safeguard is registration before an application can be submitted by a tenant. In order to be able to apply the applicant must first have registered through the Government digital gateway and received a unique reference number (URN). **You must not accept any applications that do not have a URN.**

**When there are insufficient funds remaining in any given year the gateway will close and tenants will have to wait until it reopens before registering and receiving a URN that would allow them to apply.**

After a registration number is issued the tenant will apply directly to the landlord using the landlord's own processes and systems. Once you have received an application you will be expected to record specified basic details on the Homes England IMS and update these details at key points in the process. To ensure the Government can limit the times the digital gateway is closed you must record in real time any applications that do not proceed so the funding headroom attached to those applications can be released.

Once a tenant has obtained a URN, they will complete an application form. **Once a URN has been issued the application process will be managed and run by you.**

It is recommended that the tenant has 4 weeks from the date of acquiring a URN to complete their application form.

### **Step two: Tenant eligibility check**

Upon receipt of an application form you will need to check that the tenant(s) wishing to purchase their property are eligible under the terms of the scheme. **Tenants have to fulfil certain criteria to qualify for the Government-funded discount set out below.**

You **must not** allow ineligible tenants to proceed with a purchase. It is for you to determine, within reason, what evidence you require to satisfy yourselves that the tenant meets the eligibility criteria, and you should set out clearly what documentary evidence will be acceptable. This might include tenancy agreements, rent books and other material. It is the tenant's responsibility to provide relevant information to demonstrate that they meet the eligibility requirements. In exceptional circumstances where all other options have been exhausted, a statutory declaration by the tenant would be acceptable evidence of the qualifying period. However, it is expected that this should be accompanied by corroboratory evidence of occupation and/or landlord.

### Tenants are eligible if:

- they can prove they have been a tenant of social or affordable housing for at least 3 years (this need not have been with the same landlord, or continuous); and
- they currently hold an un-demoted secure tenancy, an assured tenancy<sup>1</sup>, or a Localism Act fixed term tenancy<sup>2</sup>; and
- they can demonstrate that the property is their main home and they have resided in it for at least the last 12 months; and
- if they are applying jointly with up to 3 family members, these applicants can also demonstrate that it is their main home and it has been their residence for at least the last 12 months. No joint applicant<sup>3</sup> can be added to or removed from the application during the process without voiding the application, requiring a reapplication by the tenant(s). Joint applications where any applicant is ineligible will be voided; and
- they, and any joint applicants, have the right to reside in the UK, and can demonstrate that they meet the immigration status checks.

#### *Qualifying period*

- The qualifying period, and the period on which the discount is calculated, can include:
  - non-consecutive periods as public sector tenants;
  - all undemoted secure or assured tenancies;
  - fixed term assured short hold tenancies as long as they don't apply to the property being purchased;
  - any probationary periods as long as they have been completed or do not apply to the property being purchased;
  - any period spent as a public sector licensee (e.g. alms house; MOD tenant) even though they cannot buy such properties under the scheme.
- The qualifying period, and the period on which the discount is calculated, cannot include time spent as a non-tenant adult in a parental home.
- The onus is on the applicant to demonstrate that they qualify for the whole eligibility period being claimed. In exceptional circumstances, tenants can make a statutory declaration, but this would need to be supported by some indirect evidence (e.g. that the public sector landlord owned the relevant property for the period in question).

---

<sup>1</sup> The following categories of assured tenants are not eligible:

- Assured shorthold periodic tenants (although time spent holding such a tenancy may count towards the 3-year qualifying period);
- Assured shorthold fixed-term tenants where the original term is less than two years (although time spent holding such a tenancy may count towards the 3 year qualifying period);
- Assured fixed-term tenants where the original term is 21 years or more;
- Assured tenants in shared housing.

<sup>2</sup> A Localism Act fixed term tenancy is a fixed term assured shorthold tenancy granted by a housing association, in line with Part 7 Localism Act 2011 and the Regulator of Social Housing's Tenancy Standard, for a fixed term of at least 2 years (and usually 5 years)

<sup>3</sup> Joint tenants can apply. This text applies to joint applicants.

### Tenants are not eligible if:

- they have Preserved Right to Buy or statutory Right to Buy;
- at the time of application, they hold an assured short hold tenancy (other than a Localism Act fixed term tenancy), a contractual (non-assured, non-secure) tenancy or are a licensee;
- they have a fixed term tenancy of less than 2 years, or if they have a periodic assured shorthold tenancy (including a starter tenancy which has not converted);
- they do not have the right to reside in the UK, and cannot demonstrate that they meet the immigration status checks
- they are currently subject to the mortgage rescue scheme. They will become eligible if they move to a new property or are granted a new tenancy;
- they are residents of almshouses or co-operative housing associations;
- they have any rent arrears;
- they or any joint applicants are subject to bankruptcy proceedings or unfulfilled credit arrangements;
- they have committed anti-social behaviour as defined in the Paragraph 11 of Schedule 11 to the Anti-Social Behaviour, Crime and Policing Act 2014 and the housing association has initiated legal proceedings as a result of this. Tenants would become eligible if such legal proceedings were withdrawn or discontinued;
- they are currently subject to legal proceedings, e.g. injunction proceedings have been issued or a notice of seeking possession (NOSP) has been served. Tenants would become eligible if such legal proceedings were withdrawn or discontinued, or if the landlord failed to send papers to the court for issue within 6 months of expiry of the NOSP, or the landlord loses the case in court (including following any appeal);
- they are subject to legal proceedings at any point between application and completion. Tenants would become eligible if such legal proceedings were withdrawn or discontinued;
- they already own a property at the point of application; and will not end their ownership on or before the completion of the Voluntary Right to Buy;
- they hold an assured fixed term tenancy where the original term was 21 years or more (i.e. a long term tenancy);
- they occupy only a room, or rooms, in a shared house or flat, even if the terms of the occupancy amount to an assured tenancy;
- they are a shared ownership tenant.

### *Immigration checks*

1. The landlord (or an agent acting on their behalf) **must** carry out a document check - at application stage - with all applicants to ensure that all those purchasing have the necessary immigration status to be eligible to purchase the property.

2. If the tenant ports their discount to a property owned by another landlord, that landlord **must** satisfy themselves that the immigration checks have been carried out before completing the sale.
3. In order to satisfy such a check, each person who is purchasing the house should produce satisfactory documentation.
4. The housing association vendor of the property should check the document in the presence of the holder. They should check that the document appears genuine, and does not appear to have been tampered with. The housing association vendor is not expected to be an expert in identifying forged documents; the document just has to appear genuine to a reasonable person in order to be accepted.
5. The housing association vendor of the property should make a copy of the checked document, noting the date on which the check was made. Where a document with multiple pages has been provided, only the page containing the purchaser's personal information should be copied.
6. Copies should be kept on record by the housing association vendor for at least one year. No original documentation should be held.

#### *Source of funds for the purchase*

The application form requests details of the source of finance for the purchase. All third party companies funding the purchase **must** be registered with the Financial Conduct Authority for the application to be valid. The purpose of this check is to limit the opportunity for fraud or opportunism by unscrupulous companies. See Section 3 for more details.

#### **Step three: Checking property restrictions on sales**

Once you have received a completed application from an eligible tenant you will need to check whether the property they are currently living in is available for sale under the terms of your discretion policy (see Section 1, establishing your property exemptions and portability policies).

In the event that you use your discretion not to sell the tenant the property in which they live based on your local policy, you will need to clearly inform the tenant and offer to work with them to use their discount to purchase another home, either from your housing association or an alternative. More information on this is provided in Section 4. If the property does not fall into a category set out in your discretion policy, it will be important to be clear about the specific reasons why you are using discretion over this particular property. For example, the open market value may not cover the debt attributed, or the costs of recent improvement, to the individual property concerned or there may be specific restrictions via planning or nominations agreements that prevent the sale.

Housing associations have the freedom to manage cost floors themselves, using their discretion not to sell where necessary. They can use their discretion to ensure that no sale is at a value lower than the outstanding debt on that property.

It is recommended that Steps 2 and 3 should take no more than 4 weeks, or 8 weeks in the case that the landlord needs to check previous landlords.

#### **Step four: Charging a fee**

Under the terms of the scheme you are entitled to charge the tenant an application fee of £250. This level of fee will be reviewed by Government periodically.

This fee can be charged at any time between receipt of the application and when the valuation is undertaken. If the fee is not received, associations may cancel the application.

If the tenant is unable to proceed because they fail the eligibility test, or because the property is subject to the discretion not to sell, this fee is refundable. The fee is also refundable on successful completion of the sale. Following valuation of the property (see step five below) if the tenant chooses not to proceed the fee is non-refundable.

It is recommended that the tenant has 4 weeks from the date of request to pay the fee. This may be concurrent with the timing for steps 2 and 3 above.

#### **Step five: Valuing the property**

An important step in preparing the offer to sell is to establish the value of the property. Valuation of the property **must** be conducted by a RICS qualified surveyor commissioned by the landlord. The housing association will pay for this valuation.

**Housing associations must compile a short list of local professional RICS certified surveyors from which the tenant can choose.** The exact number of surveyors on this list should be determined locally but should be sufficient to give the tenant a reasonable choice. You may wish to enter into call-off contracts with the surveyors to manage down costs, or develop partnership arrangements with other associations to attract greater efficiency savings. You may veto from your list any surveyor whom you have reason to believe has a connection with the tenant.

On the basis that an independent professional surveyor will carry out the valuation, if either party wants to appeal the valuation the relevant party should bear the costs involved. Should the tenant wish to appeal the valuation, they should bear the additional costs, equally if you seek a second valuation you will be expected to bear the cost.

The valuer is likely to need the following information:

- if the landlord does not own the freehold or the property is a flat, the length of the lease to be granted together with the amount of the annual ground rent
- details of any known structural defects
- estimates of any service charges and improvement contributions
- any improvements the tenants have made to the property
- any specific covenants or conditions
- details of any third party interests or leases
- a plan indicating the boundaries of the property.

The Government will fund the Voluntary Right to Buy discount on the basis that it is calculated to provide the same discount benefit as that provided under the statutory Right to Buy and Preserved Right to Buy schemes. **You must calculate the discount for individual tenants on the following basis:**

- **For each complete year of confirmed tenancy, the tenant is entitled to receive a discount based on a percentage of the open market value of the property. The total periods of qualifying tenancy are added together (years, months, days) and the discount is calculated on the total years. The monetary value of this percentage is deducted from the market valuation of the property.**
- **For freehold sales the tenant is awarded a 35% discount for the first 5 years and a further 1% for each additional complete year of confirmed tenancy, up to a maximum of a 70% discount – or £80,900 across England and £108,000 in London boroughs, whichever is lower.**
- **For leasehold sales the tenant is awarded a 50% discount for the first 5 years and a further 2% for each additional complete year of confirmed tenancy, up to a maximum of 70% – or £80,900 across England and £108,000 in London boroughs, whichever is lower.**
- **The maximum discount will be reviewed annually and increased if appropriate in line with the Consumer Price Index level of inflation (CPI).**
- **If a tenant has previously received funding under Right to Buy, Preserved Right to Buy or Right to Acquire, the discount should be reduced by that amount.**

The cost floor will not affect the calculation of the discount for Voluntary Right to Buy. In circumstances where the sale would breach the cost floor you have the option to exercise your discretion not to sell the property.

Example:

Ms X has been a public sector and/or housing association tenant for 11 years. Her 3 bedroom house in Birmingham has been valued at £300,000. She has previously received £16,000 under the Right to Acquire for a property she no longer owns

$$35\% (5 \text{ years}) + 1\% \times 6(\text{years}) = 41\%$$

$$41\% \times £300,000 = £123,000$$

$$\text{Cash cap outside London} = £80,900$$

$$\text{Cash cap } £80,900 - \text{deductions } £16,000 = £64,900$$

The Government will pay a discount of £64,900 and Ms X will pay £235,100. The housing association receives £300,000 market value.

## **Step seven: Making the formal offer to sell**

Before making the formal offer to sell you must receive permission to proceed through the Homes England IMS (further details will be published in the relevant chapter of the Capital Funding Guide).

It is recommended that the tenant has 4 weeks from the date of the formal offer to sell to the date that the tenant confirms acceptance of the offer.

It is recommended that it should take no more than 12 weeks for steps 5, 6 and 7 above, i.e. for the landlord to commission the surveyor; for the survey to be conducted and valuation submitted to the landlord; for the landlord to calculate the discount; and for the landlord to seek – and Homes England to grant – permission to proceed.

## **Step eight: The sales process**

A suite of standard documents to support housing associations through the conveyancing process will be made available to housing associations in advance of the pilot launch.

It is recommended that the tenant has 4 weeks from the date of the formal sale offer to confirm acceptance of the offer.

It is recommended that the conveyancing process take no more than 12 weeks from the date the tenant confirms acceptance of the offer to completion of the sale.

You **must confirm** the completion of the sale on Homes England's IMS, including *amending any of the sale details to ensure they are accurate.*

## **Step nine: Post sale rights and responsibilities**

### *Right of first refusal*

If a tenant decides to sell their home within 10 years of buying it through the Voluntary Right to Buy, as the landlord you will have the right of first refusal. The tenant must first offer it to you, or if you do not want the property, you can instead nominate another association to carry out the purchase.

The property should be sold at the full market price agreed between you and the former tenant. It is recommended that a RICS qualified surveyor undertakes the valuation. It is reasonable to inform the tenant whether or not you will be buying the property within 8 weeks of notification by the former tenant.

As this is a voluntary scheme without underpinning legislation, the right of first refusal will need to be built into the sales contract. Model clauses will be made available to housing associations prior to the pilot launch, but landlords must satisfy themselves that these are adequate in their circumstances by taking their own legal advice.

### *Legal charge*

For the statutory Right to Buy scheme, a statutory framework is in place to ensure that where the tenant has borrowed against the property, the landlord's ability to enforce repayment of the discount where the conditions of the discount are breached has priority over other lenders. This statutory framework does not apply for the voluntary scheme.

For the purposes of the regional pilot, a 'legal charge' has been drafted by lawyers (which will be made available to housing associations prior to the pilot launch), which replicates the statutory framework for the Right to Buy as closely as possible. This document provides the landlord with sufficient legal protection to enforce repayment of the discount where conditions of the discount are breached. This document **must** be completed by tenants at the point of completion.

Tenants **must** then apply and register the charge at the Land Registry within 21 days of completion, and **must** provide a copy of the registered title to the housing association. Housing associations should ensure that copies are received of the registered title within 21 days of completion to ensure the enforcement of the repayment where conditions of the discount are breached.

The legal charge is based on the statutory framework as far as possible, but differs in several specific instances, as set out in the supporting notes to the charge, which will be made available to housing associations prior to the pilot launch.

### *Tenant repayment of discount for onward sale*

The purpose of the Voluntary Right to Buy is to support tenants into home ownership. To disincentivise fraud and opportunism, the tenant is required to pay back some or all of the discount if they sell the property on within the first five years.

They have to pay back all of the discount if they sell within the first year. After that, the total amount they pay back reduces to:

- 80% of the discount in the second year
- 60% of the discount in the third year
- 40% of the discount in the fourth year
- 20% of the discount in the fifth year.

You have the discretion not to require pay back of the discount if the tenant is transferring ownership of the property to a member of their family.

The date that triggers repayment is the date into which the former tenant enters into an agreement to sell on the property. Therefore, if the tenant signs an agreement with a third party to sell on the property to them after a period of time (for example, in return for funding to make the initial purchase), the discount is repayable from the date of that agreement not the date of onward sale (a 'deferred sale'). This is to disincentivise the exploitation of tenants by rogue companies offering to put up the money for sale in return for a future claim on the property.

As this is a voluntary scheme without underpinning legislation, the payback arrangements will need to be built into the sales contract. Landlords **must** therefore ensure that their conveyances include an appropriate repayment of discount covenant. Model clauses are included with this guidance, but landlords must satisfy themselves that these are adequate in their circumstances by taking their own legal advice.

#### *Tenant repayment of discount for subletting*

The purpose of the Voluntary Right to Buy is to support tenants into home ownership. To disincentivise sub-letting, particularly where the landlord has a lot of properties in the vicinity and/or has interests in maintaining community relations, the tenant is required to pay back some or all of the discount if they sub-let the property within the first five years.

As with onward sale, the tenant has to pay back all of the discount if they sub-let within the first year. After that, the total amount they pay back reduces to:

- 80% of the discount in the second year
- 60% of the discount in the third year
- 40% of the discount in the fourth year
- 20% of the discount in the fifth year.

You have the discretion not to require pay back of the discount if the former tenant would suffer hardship as a result. For example, the tenant may need to take up a short term employment offer elsewhere or attend to a family emergency.

#### *Repayments process*

The funding repaid by the tenant belongs to the Government as the housing association will already have received compensation for the discount. Further details on the use of recovered compensation will be published in the relevant chapter of the Capital Funding Guide.

#### **Fraud and exploitation**

If at any time during the application process you suspect fraud or money laundering, you may suspend the application to carry out investigations without penalty. You should aim to expedite investigations as quickly as possible and complete enquiries within a reasonable time. It is reasonable for the tenant to expect such investigations to take no longer than 6 months.

## **Case study**

### **L&Q – Designing out fraud**

Finding ways to reduce fraud was one of the key aims of the initial Voluntary Right to Buy pilot. At L&Q we were very aware that with discounts of over £100,000 available to tenants in London there would be increased potential for fraud. We have designed an application process that aims to prevent and identify fraudulent applications as early as possible.

All applicants attend a face to face interview with L&Q, which gives all parties an opportunity to answer questions and check documentation. All parties to the purchase must attend the interview with their documentation. This includes:

- written evidence of length of social housing sector tenancy
- written evidence of 12 month occupation in the property for all parties to the purchase
- photographic identification (UV checked for authenticity)
- copies of bank statements/utility bills for the past year.

We also refer all applications for tenancy verification. This involves checking the information provided with specialist software that can identify where applicants are registered as living and where items such as mobile phones are registered.

This can provide insight into any potential subletting or alternative property ownership.

As the VRtB scheme sits outside the legislation for RTB/A it has been possible to ask for additional information and consult with external agencies as follows:

- New application form that requires more detailed information and contains more scope to obtain information from external parties due to a more detailed applicant declaration
- Scrutiny of ID documentation to prove identity and occupancy
- Referral of all applications to Tenancy Verification Team
- Use of National Anti-Fraud Network anti-fraud software
- Detailed anti-money laundering (AML) checks of funds used.
- Cross-agency partnering with Department for Work and Pensions (DWP) & Local Authorities
- Fraud interviews and tenancy audit visits at properties under suspicion
- Issuing Notices to Quit (NTQ)
- Legal/Court action
- Recovery of properties

This approach has led to numerous detailed investigations, tenancy audit visits and in some cases, L&Q are actively seeking eviction for subletting. Types of fraud detected include identity fraud, tenancy fraud, money laundering, benefit fraud and illegal subletting.

## SECTION 4: Operating a portable discount

Two of the key principles in the Voluntary Right to Buy agreement are that there is a presumption that you will sell eligible tenants the property in which they live, but that you also have the discretion to refuse the sale of a property. As set out in Section 1 above, where you operate discretion not to sell you **must** work with the tenant to offer them the opportunity to use their discount to purchase an alternative property from either your own or another association's existing stock or development pipeline under the terms of the housing association's porting policy.

The tenant has the discretion to accept or decline the offer to port their Right to Buy level discount to an alternative property. You will need to set out in your local portability policy the point at which you will judge yourself to have discharged the requirement to offer a portable discount. As with a purchase of the property in which they live, housing associations will receive the full market value of the properties sold, with the value of the discount funded by the Government subject to associations following the requirements set out in the guidance.

### Setting a local portability policy

You **must** have a portability policy which sets out how you will work with eligible tenants to port their discount. You **must** make a reasonable offer of an alternative property to the tenant and the offer **must** be from your stock or that of another housing association, by agreement. However, you are not required to offer a 'like for like' property or have a property available when the tenant makes an application.

What is 'reasonable' will depend on individual circumstances, and you will need to be able to justify how your portability policy is reasonable should the tenant complain. You will therefore need to satisfy yourself that there is a clear description and rationale for what you consider to be a reasonable offer.

- *Establishing your portability policy*

Things to consider when establishing what is reasonable include:

- What properties you have available – either through voids or pipeline build.
- If few or no properties are available from voids or pipeline build, what steps you propose to take to work in partnership with other housing associations.
- When alternative properties will become available. It is not unreasonable for tenants to wait for pipeline developments to become available, but if you only operate a void policy, are you proactively working with other housing associations to expand the offer.
- If you have a relatively large supply of properties to offer, to what extent you can offer the tenant a choice.
- The size of the tenant's family. Does the alternative accommodation offer appropriate room (this can work both ways – a large family can reasonably

expect a large home but if a couple whose children have left home live in a family sized house they could be offered smaller accommodation).

- The location of the tenant, for example do they need to stay in an area for work.

An offer may take the form of a firm individual offer of a specific property, or be broader such as offering a selection of off plan properties or offering the tenant access to properties via choice based lettings. This offer may also be time limited or time specific – for example linked to a forthcoming development scheme.

In your policy, you should clearly outline to the tenant at the earliest possible stage what shape any portability offer is likely to take. The grid below may assist with defining the criteria by which an association would make an offer to a tenant(s). Inevitably the weighting of these factors will differ between associations. For the majority of associations, it is likely that availability would be the key factor in defining your offer.

<b>Geography</b>	<b>Availability</b>	<b>Cost</b>	<b>Quality</b>
<ul style="list-style-type: none"> <li>• Location of alternative property</li> <li>• Location buyer wishes to live in</li> <li>• Proximity to work</li> <li>• Proximity to schools</li> </ul>	<ul style="list-style-type: none"> <li>• Void</li> <li>• New Build</li> <li>• Tenancy expiring</li> <li>• Restrictive covenant</li> <li>• Lender consent</li> </ul>	<ul style="list-style-type: none"> <li>• Cost of purchase</li> <li>• Major works pending</li> <li>• Cost of running</li> <li>• Service Charge</li> </ul>	<ul style="list-style-type: none"> <li>• Size</li> <li>• No of rooms</li> <li>• State of repair</li> <li>• Warmth</li> <li>• Safety</li> </ul>

You are not expected to keep making offers until you find one that is acceptable to the tenant. To manage tenant expectations therefore it is recommended that you say something in your policy about the point at which you will judge yourself to have discharged the requirement to offer a portable discount under the scheme.

- *Time limitations on the portable discount offer (deferred portability)*

When the tenant applies under the Voluntary Right to Buy they are required to go through the Government’s digital gateway and get a unique reference number. This notionally allocates funding from the Government to cover the cost of the discount whilst the application proceeds. However, where applications do not proceed, the notionally allocated funding is recycled to ensure the maximum number of applications can proceed to sale.

Where a tenant’s home is not available for sale and the tenant is applying to purchase a property via a portable discount, you should log their initial property in the IMS immediately. If a suitable property cannot be found or a mortgage secured within 3 months, then you should withdraw the application on IMS.

Where a tenant is accessing an immediate portable discount, they will proceed on the same basis as a normal sale and are unaffected. However, where a tenant is

unable to access a portable discount immediately because a suitable property cannot be identified to move into, they will have to void their application and reapply through the digital gateway when a property becomes available. However, if a specific property has been identified (e.g. a new build) with a definite completion date within 3 months, and the tenant has secured an approved mortgage against the property, the application can be held in the system.

You will want to consider how to manage the tenant relationship in your portability policy.

- *The roles and responsibilities of the tenant and the landlord as part of the porting process*

The local policy should define any expectations of the tenant in pursuing a portable discount. For example, if you were running a porting programme where tenants could move to properties via Choice Based Lettings (CBL) you might expect the tenant to identify and apply for a property they wished to purchase through CBL. On the other hand, it would not be reasonable to expect a tenant to find an alternate property with another housing association. It would be the housing associations' responsibility to negotiate between themselves before making an offer to the tenant.

- *Agreements to offer portability via partner housing associations*

No housing association is obliged to offer stock to another association or enter into a partnership arrangement but larger developing housing associations are encouraged to work with and support smaller, non-developing housing associations to ensure the sector as a whole delivers its commitment to Government in the agreement.

When creating partnership arrangements you will want to consider the most appropriate way of managing both the process and the funding. It may be that the simplest method is for the landlord of the property the tenant is buying to take over the entire process, or you may want to maintain a relationship with the tenant to help manage the resulting vacancy. In either event, the compensation payment will be paid to the housing association selling the property.

Local portability policies should outline any partnership agreements and the process for transferring/receiving the porting tenant to or from your organisation. You must also be clear in your agreements which housing association will be responsible for updating the IMS system. This will be covered in the IMS Guide.

- *How to handle complaints*

It is anticipated that complaints should be handled in the first instance through an association's established corporate complaints procedure. It will be possible for tenants to escalate complaints to the Housing Ombudsman in the normal way. More information on the role of the Housing Ombudsman can be found in Section 1 of this guide.

## Establishing the discount

The discount available to eligible tenants should be based on the value of the property that is being ported to not the property in which the tenant currently resides. You will need to follow the steps outlined in Sections 1 and 3 of this guide based on the property that the tenant is porting their discount to.

## Identifying alternative properties

There are several likely sources of properties that could be offered to tenants who are porting their Right to Buy level discount which include:

- **New build pipeline.** Housing associations with a development pipeline may wish to consider offering some or all of their new build properties to tenants wishing to exercise their Voluntary Right to Buy via a portable discount. Housing associations may choose to offer any homes that they have developed, including those that have been developed for outright sale or properties that have been developed by a non-charitable subsidiary of a housing association. A key point to consider in these instances is any time lag between an off plan offer and the tenant actually purchasing as this may affect the funding availability (see above).
- **Voids.** Housing associations that possess a number of medium or long term voids may wish to consider whether these would be suitable for porting. Housing associations will not be expected to take a rent loss. To avoid this one option is to move the tenant into the property on a short term rental contract until they purchase. The tenant's original property could then be re-let. Housing associations would not be expected to hold the original property open for tenants whilst the sale went through.
- **Choice based lettings (CBL).** For associations with control of CBL or with good relationships with their local authority amending the allocations and choice based letting process to include a portability priority is an option.
- **Tenancy swaps.** Housing associations may wish to establish a similar process to CBL using tenancy swaps. This is most likely to be used where CBL is unlikely to prove a viable mechanism for moving tenants into properties.
- **Partnership with other housing associations.** You may wish to partner with one or more housing associations (either within or outside of the pilot area) to expand the number of properties that would be available to tenants. In some instances, these agreements could include an expanded local housing options service or a consortia agreement. The nature of partnership agreements would be of the partner association's own determining. No housing association is obliged to offer stock to another association or enter into a partnership arrangement.

## **The process to port**

The following standard process for porting has been agreed. This process provides the framework within which housing associations will operate their own local portability policies.

### **Step 1: The housing association exercises discretion not to sell**

You inform the tenant that they are unable to purchase the home they are currently resident in and the rationale for this in line with your local policy. This should include written confirmation.

### **Step 2: The housing association outlines options to the tenant**

You should set out for the tenant the available portability offer(s) in line with your local portability policy. This may be a face to face conversation, phone call, letter, email, prospectus or other mechanism which is set out in your portability policy.

Tenants who do not want to avail themselves of the portability offer can, of course, remain a tenant in their existing home; if so, you should reject the application and **must** close down the application on the IMS system (see IMS guide).

You may also want to draw the tenant(s)' attention to other home ownership options outside the Voluntary Right to Buy scheme, such as Help to Buy or Shared Ownership, but if so, you must make clear that the Voluntary Right to Buy discount is not available on these schemes.

### **Step 3a: The tenant agrees to an available portable option**

Where a property is immediately available (either a void or landlord own development supply) you **must** provide the details of the address on the IMS system (see IMS guide) and follow the normal application and sales process set out in Section 3 from Step 4 onwards, ensuring all the steps relate to the property the tenant is buying.

### **Step 3b: The tenant agrees to a portable option but a suitable property is not immediately available (deferred portability)**

You will need to consider how long it will take to identify a suitable property. You will want to consider, for example, the frequency and likelihood of a void and/or readiness of new supply. If the tenant is not be able to start the sales process within a reasonable timeframe, under the requirements of the Government's compensation payment criteria, you **must** advise Homes England that the application is on hold. The allocation of funding for that tenant's VRtB discount will then be cancelled. You will also want to put in place any specific arrangements for managing the application form and process set out in your portability policy.

### **Step 4: The housing association reviews suitable properties from own stock.**

As determined by its portability policy the housing association should, in the first instance, look to review the tenant's current circumstance and make an offer to the tenant from their own stock, if a suitable property is available.

### **Step 5: The discount is calculated**

The discount is based on the eligibility of the tenant and the value of the property that the tenant is purchasing. The process set out in Section 2 should be applied.

### **Step 6: An offer is made to the tenant**

The offer should set out any terms, including whether the offer is time limited and any next steps as applicable should the tenant decline the offer.

### **Step 7: If appropriate, the parent association passes the tenant to a partner housing association**

If the association has a partnership agreement in place and is not able to offer a property from its own stock, then the tenant may be passed to a partner association at this stage. In such cases, the discount is calculated and the offer made to the tenant by the landlord from which the property is being bought.

#### **Operating a portable discount: checklist**

- ✓ Review and map which properties you are planning to exercise discretion not to sell.
- ✓ Review likely volume of available porting properties against volume of stock on which discretion will be exercised.
- ✓ Use this information to refine and develop a portability policy so that it reflects the available properties you may be able to offer over a given time period.
- ✓ If desired, approach potential housing association partners to establish cross organisational porting agreements.
- ✓ Review portability policy after 12 months.
- ✓ Consider how you will work to highlight other home ownership options to the tenant. This might include signposting to shared ownership opportunities, Help to Buy and other schemes.

## **SECTION 5: Replacing homes sold**

It is a fundamental principle of the voluntary agreement that the Government compensates housing associations for 100% of the value of the discount on homes sold. It is also a fundamental principle that these homes will be replaced by housing associations on a one for one basis nationally through new supply. The sector as a whole will need to work together to ensure that it delivers the Agreement and ensure that the sum of replacements by individual housing associations meets the national one for one commitment.

This ambition to deliver one for one replacement through new supply is on a national basis, not a local or regional basis, nor is it an obligation on individual associations. For some housing associations in low market value areas, the sales receipts may be insufficient to cover the cost of new build and they may need to replace homes through new supply at a ratio of less than one for one. In some limited circumstances, for example where the receipt is insufficient, in areas of particularly low demand, or where a non-developing association is unable to enter into a partnership arrangement with a developing housing association, it may not be appropriate or desirable for a housing association to build a new home to replace the one sold. In these circumstances housing associations would have flexibility to buy another one or bring an empty home back into use to replace the home sold. It is anticipated that some housing associations will be able to deliver replacements through new supply at a higher than one for one ratio. This is necessary to ensure that the sector as a whole meets the national commitment to replace homes sold on a one for one basis through new supply.

While aiming for replacement within two years, the default position under the terms of the agreement is that housing associations would have flexibility to replace homes within a three year period.

Information on how to log sales and receive the compensation for the sales will be made available in the accompanying Homes England IMS guide, whilst further information will be provided by MHCLG on how to report on replacements.

### **Setting a local replacement policy**

It is up to you to establish how you will deliver replacements for properties sold under the Voluntary Right to Buy scheme. More detail on the type and nature of eligible replacements can be found in Section 5. It is recommended that you develop a local policy to inform this, but you will not be required to publish such a policy.

In light of the sector-wide commitment, you should always consider how you could deliver replacement through new supply in the first instance, either through self-development or through partnership arrangements with developing housing associations.

Your policy should also consider how you will meet the mandatory replacement criteria required by Government for the payment of the discount compensation. These are highlighted in the guidance below.

### **Receipts from the sale of homes under the Voluntary Right to Buy**

When a property is sold, you will receive full open market value for that sale. This will be in the form of:

- i. A receipt from the tenant at open market value minus discount
- ii. Compensation for the value of the discount from the Government in the form of revenue grant, subject to compliance with this guidance.

You will receive 100% of the receipts from the sale of the property based on the open market value for the property being sold. The Government will recompense housing associations in full for the discount offered to tenants subject to meeting the terms of this guidance and the requirements of the Capital Funding Guide so that associations receive full market value. For the duration of the regional pilot, 100% of the payment from Government to cover the discount will be paid by Homes England on completion of the sale.

Those receipts, and the compensation discount, minus any transaction costs and debt repayment, will be held on your balance sheet. This is a voluntary scheme and there is no statutory compulsion to sell where full compensation is not forthcoming. Under the terms of the agreement, all net proceeds from sales should be spent on new supply (or in exceptional circumstances on acquisitions). You may also choose to direct additional resources towards replacement properties.

Details on the requirements for replacement units, logging and monitoring replacements and receiving the receipts from the sale of the property are available in Section 5 of this document. Further, more detailed information will also be made available by MHCLG prior to the pilot launch.

Housing associations will wish to consider as part of their preparation for the scheme how they will replace homes sold. More detail on the type and nature of eligible replacements can be found in Section 5.

The agreement is clear that any receipts from these sales are not intended to be subject to any transfer undertakings and agreements with local authorities. You may wish to check your transfer agreements to ensure that this is not the case. Where this may be the case you should factor that into your local discretion policy.

### **Payment of the discount to housing associations**

The Government will pay full compensation for the Voluntary Right to Buy discount to housing associations based on the open market value of the property being sold.

The Government will pay the association 100% compensation for the discount during the pilot on completion of the sale.

### **Replacing homes sold**

You may replace homes sold with any affordable tenure. Replacement homes can be built in any location nationally (and not just within the Midlands pilot area) and can be of any type or size of affordable tenure. This will help you respond to market pressures and local housing needs.

This can include but is not limited to:

- Social and Affordable Rent
- Shared ownership and other part rent, part buy models
- Starter Homes.

You may replace the home with a property of any size and in any location, but the property must be self-contained (i.e. have its own front door).

### **Counting replacement homes against the national one for one commitment**

You must not count any property as a replacement home if it has been built (in part or total) with funding from the Affordable Homes Programme.

You must not count any property as a replacement home if it has been delivered through Section 106 planning agreements, without the consent of Homes England. Homes England will provide consent where you can demonstrate additionality.

You may count any affordable home being developed as part of a current or future development pipeline, if you can demonstrate additionality. In order to demonstrate additionality you must show that the affordable home being developed would not have been built without the receipt from the Voluntary Right to Buy sale.

In exceptional circumstances, if an association is clear that it has exhausted all possibilities, you may count the following types of properties as replacement homes:

- Homes purchased on the open market
- Empty properties brought back into use
- Non-grant funded new build purchase of affordable home from a developer.

Homes purchased on the open market, empty properties brought back to use, and non-grant funded new build purchases of affordable homes from a developer will count as a replacement home but will not contribute to the national one for one commitment through new supply.

Housing associations may consider working together to build replacement homes. For example, by joining or forming a development consortium.

### **Recording sales and replacements**

Housing associations may begin recording the delivery of replacement homes from the 'go live' date and in advance of sales taking place.

MHCLG will provide details of the timelines, circumstances and data required to trigger repayment of the discount compensation in due course.

Information needed to record replacement homes will be limited to:

- Name of scheme development
- Number
- Location
- Tenure
- New build or acquisition
- Number of bedrooms

- Development cost (by land, works, on-cost)
- Funding (by receipt, discount, etc.).

Data submitted will be shared with housing associations and the Federation. The data sharing protocol will be made available before the pilot launches.

#### **Replacing homes sold: checklist**

- ✓ Consider how you will replace the homes sold and how this can fit with and support your broader development programme.
- ✓ Include assumptions about sales and replacements in your stress testing projections.
- ✓ Consider whether you wish to work with other associations via a development consortium to build new homes.

## **SECTION 6: Audit Assurance**

As the Government is funding the Voluntary Right to Buy Pilot compensation payments from the public purse, it is necessary to provide assurance that procedural requirements have been met to support a claim for payment as part of the Voluntary Right to Buy. This audit assurance will be captured as part of Homes England's existing Compliance Audit Framework.

Homes England's Compliance Audit is carried out via a selection of random standardised audit checks made by provider-appointed Independent Auditors on an agreed sample of sales. All audits will be completed on line and a random sample selection is automated through Homes England's IMS.

The audit sample drawn will be limited to no more than 5 sales per provider. The audit year runs from 1 April to 31 March; it is therefore expected that any sales made in the Voluntary Right to Buy pilot would be eligible for audit in 2019/20 and 2020/2021.

A standardised checklist and detail of breach measures will be made available in due course on the NHF/MHCLG website.